IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 152 OF 2005

1 Pravin Ishwarlal Ghodke & Others ... Petitioners

V/s

1 The State of Maharashtra & Another ... Respondents

Mrs. S.A. Dhamale for petitioners
Mr. S.A. Ghaisas for respondent No.2

Coram : V.M. Kanade, J.
Dated : 25/04/2005.

P.C. :-

1 The petitioners are challenging the order of issuance of process by the Judicial Magistrate First Class, Nashik on the complaint filed by the respondent No.2, wife of the petitioner No.1 under sections 409A,403 read with section 34 of the Indian Penal Code.

2 It is submitted by the learned counsel appearing on behalf of the petitioners that the Judicial Magistrate First Class, Nashik though he did not have the jurisdiction tried and decided the complaint filed by the respondent No.2. It is submitted that the cause of action for filing the complaint has arisen in Bombay. It is also submitted that from the perusal of the complaint it can be seen that no case has made out under section 498A,403 read with section 34 of the Indian Penal Code. It is further

submitted that the complaint was filed after the respondent No.2 went back to her parents. It is submitted that initially the complaint was filed in Bombay. The said complaint was withdrawn and thereafter the complaint bearing R.C.C. No.930 of 2003 has been filed .Therefore, the second complaint is not maintainable.

3 It is not possible to accept the submission made by the learned counsel for the petitioners. All the questions raised by the petitioners in this petition can be decided by the trial court after the evidence is adduced by the parties. However, the petitioners are exempted from appearing in the trial court. The petitioners' plea can be recorded through the advocate and the Magistrate may not direct the petitioners to remain present in the court unless it is absolutely necessary. With these directions,criminal writ petition is disposed of.

(V.M. Kanade,J.)